

REMARKS

The above amendments and following remarks are submitted as a preliminary amendment with regard to the instant application for continued prosecution in response to the Final Official Action of the Examiner mailed December 4, 2001 and in view of the Advisory Action of the Examiner mailed March 8, 2002. Having addressed all objections and grounds of rejection, claims 1-22, being all the pending claims, are now deemed in condition for allowance. Entry of this amendment and the accompanying Declaration under 37 C.F.R. 1.132 and reconsideration to that end is respectfully requested.

The major issue remaining is the Examiner's rejection of claims 1-20 under 35 U.S.C. 103(a) as unpatentable over Cool Ice User's Guide Release 1.0 in view of *Classic Mapper User's Guide*. As earlier explained in the prosecution, neither of these references is an enabling reference in and of itself, as enablement requires teaching of both how to "make" and how to "use" the invention.. Both are "User's Guides". Though either can obviously teach how to use an invention, neither teaches (or even purports to teach) how to "make" an invention.

Nevertheless, both are evidence of actual commercial products admittedly on sale and in the public domain, which constitute prior art under 35 U.S.C. 102(b). Thus, in referring

to the prior art nature of these references, it has been convenient to consider them representative of the corresponding prior art product, though neither reference is enabling prior art in itself.

Using this approach, the Examiner has admitted that the Cool ICE User's Guide does not "... disclose transfer of an unavailability message", which is limiting of all pending claims. However, the Examiner has clearly erroneously found:

Classic Mapper User's Guide teaches transfer of messages that let the user know the status of the system [see page 19-3 and 19-4].

This argument was first presented in the second official action. Applicant provided extensive argument concerning this finding in response thereto, because this clearly erroneous finding is determinative of the patentability of all pending claims.

For whatever reason, the Examiner has disregarded these arguments. Therefore, Applicant resubmits herewith the Declaration of Barbara N. Christensen under 37 C.F.R. 1.132 which directly rebuts this crucial fact finding of the Examiner. Ms. Christensen is deemed to be one of skill in the art having substantial experience with the actual prior art products. It is apparent from her sworn statement that the Examiner's position is unsupportable.

The cited prior art refers to a batch operating environment which not only has no "unavailability" message, it has no need to provide applications with knowledge of the actual system status

at any one point in time. Processing tasks submitted for batch execution assume that the system is unavailable to it at the time of submission. Though this unavailability may be a result of system inoperativeness, it could also be the result of an arbitrary low priority on the execution queue. It is only important that the system becomes available at some time in the future, regardless of the indefiniteness of the time of that availability.

Because the claimed invention, however, is limited by a real time environment (i.e., human user at a user terminal expecting a prompt response to a service request), the "unavailability" message is a most significant addition to the system.

Newly presented claims 21-22 are limited to a different scope of the claimed invention. However, each is deemed to be patentable for the reasons already presented.

Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-22, as amended, being the only pending claims.

Respectfully submitted,

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By his attorney,

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